Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Request for Declaratory Ruling	)	CC Docket No. 99-143
Regarding the Use of Section 252(i)	)	
to Opt Into Provisions Containing	)	
Non-Cost-Based Rates	)	

REPLY COMMENTS OF MCI WORLDCOM, INC.

MCI WorldCom, Inc. (MCI WorldCom), by its attorneys, hereby files its reply comments in response to comments filed concerning the above-captioned petition,[1] particularly the comments of Bell Atlantic. The vast majority of commenters support MCI WorldCom's view that incumbent local exchange carriers (ILECs) are obliged to compensate local exchange carriers (LECs) for the transport and termination of traffic destined to Internet service providers (ISPs). The reciprocal compensation obligations are in accordance with state commission mandates and voluntarily assumed contractual obligations incurred in negotiated interconnection agreements. ILECs, therefore, cannot use the Commission's pick-and-choose rules to evade their reciprocal compensation obligations.

[1] Request for Declaratory Ruling Regarding the Use of Section 252(I) to Opt Into Provisions Containing Non-Cost-Based Rates, filed April 13, 1999 ("Petition").

I. BELL ATLANTIC'S SUPPORT OF GTE'S PETITION IS BASELESS.

The record amply supports MCI WorldCom's position that Bell Atlantic is merely supporting the flawed premise asserted by GTE. Bell Atlantic and GTE are asking the Commission to ignore its own decisions and state commission precedent and to condone anti-competitive and discriminatory breaches of negotiated contracts. ILECs cannot exempt themselves from the pick and choose process' contractual provisions that they believe are unfavorable.

First, GTE and Bell Atlantic erroneously rely on the term "cost-based" as the standard. The actual standard, established and defined by the Commission, is that "publicly-filed agreements be made available only to carriers who cause the incumbent LEC to incur no greater costs than the carrier who originally negotiated the agreement."[2] Therefore, the test is whether the costs are greater or not, not whether they are "cost-based," a term not defined by the Commission. GTE's and Bell Atlantic's interpretation of the law is simply wrong.

Second, the pick-and-choose rule is designed to prevent discrimination between similarly situated carriers. As AT&T pointed out, the Local Competition Order itself states that the pick-and-choose requirement is "a primary tool of the 1996 Act for preventing discrimination."[3] GTE and Bell Atlantic propose the type of discriminatory scenario that Congress and the Commission sought to *prevent*. Several commenters have pointed out that GTE and Bell Atlantic assert that ISP-bound calls are not "cost-based," by attempting to reason that as technology constantly changes, the costs of providing service and interconnection change as well, thus making the calls

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[2] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd. 15499, ¶ 1317 (1996) ("Local Competition Order").

[3] Local Competition Order, ¶ 1296.

"non-cost-based."[4] Such an interpretation would essentially allow GTE to refuse to permit any carriers from opting into existing interconnection agreements."[5] This would allow ILECs to provide certain CLECs with the same interconnection or network elements at a certain price, and charge other CLECs a higher price for the same interconnection or network element. That is the opposite of what Congress or the Commission intended.

II. THE NON-ILEC COMMENTERS UNANIMOUSLY AGREE THAT ILECS ARE BOUND TO PAY RECIPROCAL COMPENSATION FOR ISP-BOUND CALLS

A. The Commission Has Already Decided the Interconnection Agreement Issues Regarding Jurisdiction and CLECs' Entitlement to Reciprocal Compensation.

ILECs are bound not only by the terms of their interconnection agreements; ILECs are bound as well by the Commission's orders. Bell Atlantic and GTE are trying to ignore the fact that the Commission has already ruled that CLECs are entitled to reciprocal compensation.

First, the Commission has clearly stated that it is the role of the *state* commissions to approve, arbitrate, and enforce interconnection agreements.[6] In its Reciprocal Compensation

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[4] As stated above, the actual standard is not whether the rate is "cost-based," but whether the ILEC's costs of providing a particular connection, service, or element would be greater for the requesting carrier than it was for the original carrier.

[5] At least thirteen commenters share MCI WorldCom's concerns. *See* Joint Comments of KMC Telecom Inc.; Level 3 Communications, LLC; GST Telecom Inc.; and Starpower Communications, LLC at 8. *See also* Comments of Sprint at 2. *See also* Comments of Media One Group at 2. *See also* Joint Comments of the Association for Local Telecommunications Services; Choice One Communications, Inc.; Focal Communications Corporation; and Hyperion Telecommunications, Inc. at 8. *See also* Comments of Qwest Communications Corporation at 7. See also Comments of NextLink Communications and Advanced Telecom Group at 1.

Order, the Commission explicitly stated that the parties to an interconnection agreement are bound by its terms, as determined by state commissions.[7] GTE and Bell Atlantic are asking the Commission to ignore the unanimous holdings of all 31 state commissions that have already considered the issue of reciprocal compensation for ISP-bound calls and determined that reciprocal compensation should be paid for ISP traffic.[8] The Commission has said that until a national, interstate rule is created, "we find no reason to interfere with state commission findings as to whether reciprocal compensation provisions of interconnection agreements apply to ISP-bound traffic."[9]

Second, Congress and the Commission have already determined that a requesting LEC is entitled to the same terms and conditions of previously approved interconnection agreements between the ILEC and other LECs.[10] Therefore, ILECs must make interconnection agreements available to requesting carriers as long as the original LEC receives the agreement. The fact that the ILEC later finds certain provisions to be to its disadvantage is irrelevant.

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[6] Inter-Carrier Compensation for ISP-Bound Traffic, *Notice of Proposed Rulemaking*, CC Docket No. 99-68, FCC 99-38, ¶ 1, 21 (rel. Feb. 26, 1999) ("Reciprocal Compensation Order").

[7] *See* Reciprocal Compensation Order, at ¶1: "Parties should be bound by their existing interconnection agreements, as determined by state commissions." *See also* ¶ 28, which states that state commission decisions should be binding in states that have not yet addressed the issue. *See also* ¶ 25, which recaps that state commission approval and arbitration of interconnection agreements complies with Section 252 of the Telecommunications Act of 1996.

[8] *See* Comments of KMC, Level 3, GST and Starpower, at 9. *See also* Comments of ALTS; Choice One Communications, Inc.; Focal Communications, Corporation; and Hyperion Telecommunications, Inc. at ii, 6.

[9] *See* Reciprocal Compensation Order, at ¶ 21.

[10] Local Competition Order, ¶ 1317.

C. The Commission has Already Determined that Symmetrical Rates Should Apply to Local Traffic.

MCI WorldCom agrees with commenters in recognizing GTE's petition for what it is: another collateral attack on the CLECs' right to reciprocal compensation, and on the Commission's orders.[11] As AT&T has pointed out, the Commission has already rejected GTE's argument that requesting carriers not be allowed to opt into switching rates if they are not performing the same switching functions.[12] The Commission determined that ILECs' tandem rates can be used as proxies for reciprocal compensation.[13] In fact, in implementing symmetrical rates, the Commission did so with the intent of helping to counterbalance the superior bargaining position of ILECs over CLECs in negotiating interconnection agreements.[14] Granting GTE's petition would allow the ILECs to use their monopoly power to attempt to negotiate higher terminating rates, to the detriment of CLECs, competition and the public interest.

[11] *See* Comments of Intermedia Communications, Inc. at 1. *See also* Comments of AT&T Corp. at 6. *See also* Comments of Competitive Telecommunications Association ("CompTel") at 5. *See also* Comments of NextLink and Advanced Telecom Group at 6. *See also* Joint Comments of ALTS; Choice One Communications; Focal Communications Corporation; and Hyperion Telecommunications, Inc. at 10.

[12] See Comments of AT&T at 6.

[13] 47 CFR Section 51.711 (a)(3); *accord Local Competition Order*, ¶1086. *See also* Comments of ALTS, *et al*, at 10.

[14] Local Competition Order, ¶1087. *See also* Comments of CompTel, at 6.

CONCLUSION

For the foregoing reasons, MCI WorldCom urges the Commission to deny GTE's Petition.

Respectfully Submitted,

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Dated: May 26, 1999

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I, Lonzena Rogers, do hereby certify, that on Wednesday, May 26, 1999, I have caused to be served by first class United States Postal a true copy of the foregoing Reply Comments on the following:

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